



REMARKS

Claim Rejections -- 35 U.S.C. §112

Claims 1-24 were rejected under 35 U.S.C. §112 as being indefinite for failure to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Office Action states that in claims 1, 23 and 24 the recitation of a clearance space is improper because space cannot be claimed. It is further suggested that the space be defined in terms of a structure, such as, the plane of the bottom surface and the inner surfaces of the sides of the rails.

This issue was specifically addressed with the Amendment provided on January 3, 2002. Claim 1 as amended describes rails extending a portion of the width of the deck “and defining a clearance space below the rectangular deck.” Claims 23 and 24 have been similarly amended to “inferentially claim the clearance space as opposed to positively claim the clearance space.” Accordingly, the Applicant has defined the clearance space in terms of a structure as requested by the April Office Action. Additionally, no response has been provided to the Applicant as to why a space cannot be claimed as explained in *In re Newton*, 163 USPQ 34 CCPA (1969). Also, no explanation has been provided to the Applicant as to why 246 patents have been granted by the Patent Office since 1996 specifically reciting a “clearance space” as an element of a claim, but why it is now an improper limitation for this Applicant. Accordingly, the Applicant believes that the amendment provided on January 3, 2002, should overcome this rejection. Accordingly, the Applicants respectfully request withdrawal of this rejection.

Claim Rejections -- 35 U.S.C. § 103

The Office Action continues to reject claims 1-24 under 35 U.S.C. § 103 as being unpatentable over Haskins in view of John et al. and Shuert. The Office Action applies new logic by stating that the “bifurcated” clearance shown in Shuert created by legs 32 and 32’ is the equivalent of the structure claimed by the Applicant. Accordingly, the

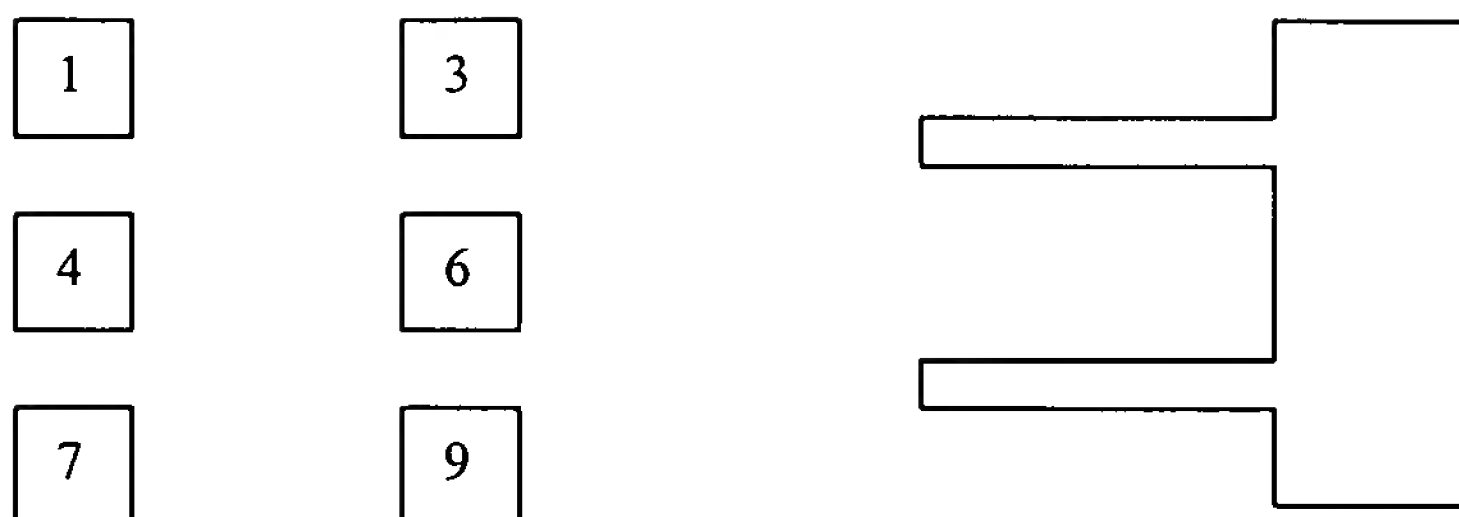
Office Action now states that it is unnecessary to rely on the “mere reversal of parts” argument utilized in the October 4, 2001, Office Action.

By withdrawing the “mere reversal of parts” argument, it appears that the Examiner has implicitly agreed with the Applicant’s explanation that the “reversal of parts” argument was not applicable to the structure of the invention. This rebuttal of the prima facie case of obviousness presented by the October 2001 Office Action should make these claims allowable. However, the April 2002 Office Action did not treat the claims in this manner. The current Office Action proposes the new argument that it would have been obvious to modify Haskins to include a downwardly depending support as taught in John et al. and then combine this structure with Shuert to support the proposition that a “bifurcated clearance” is the functional equivalent of the “clearance space” claimed by the Applicant.

A “bifurcated clearance” does not meet the limitations of the claimed structure nor could a “bifurcated clearance” be an equivalent. The bifurcated clearance has a post or tab 32' which *bifurcates* the clearance space. This post prevents a hand truck blade from accessing the clearance space to lift the tray which is an enumerated benefit of having the clearance space as reflected in the Applicant’s claims. A hand truck will not work with the “bifurcated clearance” shown in Shuert. It is only with improper hindsight that the Office Action now asserts that the elongated indentations shown in Shuert are the structural equivalent of the clearance space claimed by the Applicant.

Shuert shows a tray having the leg structure in cooperation with a forklift:

Illustration 1.



The Applicant is attempting to claim a structure that could be represented as:

Illustration 2.



The Office Action effectively makes the improper assertion that Illustration 1 and Illustration 2 are structural equivalents of one another. The Applicant respectfully disagrees with this conclusion. There is no teaching or suggestion in the art that the ability to accept two spaced apart tines of a fork lift (in a bifurcated clearance shown in Illustration 1) is structurally equivalent to the ability to accept a planar blade (represented in Illustration 2) of a hand truck up under the deck in the clearance space. In fact, the tab 32' shown in Shuert (or block number 6 shown above) would *prevent* insertion of the blade of the hand truck beneath the deck sufficiently to pick up the pallet. On the other hand, the tab 32', apparently *assists* in the proper placement of the forklift tines into the spaces between the rows of supports. Accordingly, the Shuert structure is believed to teach away from the removal of the tab 32' as proposed by the Office Action.

CONCLUSION

The Examiner is respectfully requested to withdraw the rejections under 35 U.S.C. § 112 and § 103 and allow this case to proceed to allowance. In the alternative, it is respectfully requested that the Examiner issue a Final Office Action so this case may go to appeal as expeditiously as possible.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C., 20231, on this 10th day of December, 2002.

By: 

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